

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

**LARRY WHEELER, DAVID KEETON,  
MARAL KEETON and  
VINCENT PARISI, individually  
and on behalf of those similarly  
situated,**

**Plaintiffs,**

**v.**

**THE PENSION VALUE PLAN  
FOR EMPLOYEES OF THE BOEING  
COMPANY and MCDONNELL DOUGLAS  
CORPORATION,**

**Defendants.**

**No. 06-0500-DRH**

**MEMORANDUM and ORDER**

**HERNDON, District Judge:**

Pending before the Court is Plaintiffs' motion to stay count II (Doc. 17). Specifically, Plaintiffs move the Court to stay Count II of their complaint pending a ruling from the United States Supreme Court on a petition for a writ of certiorari in the case of ***Cooper v. IBM Personal Pension Plan*, 436 F.3d 636 (7<sup>th</sup> Cir. 2006)**.<sup>1</sup> Plaintiffs allege in Count II of their complaint that the case balance formula violates ERISA § 204(b)(1)(H) for the same reason that the IBM Plan allegedly violated ERISA § 204(b)(1)(H). Defendants oppose the motion.

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<sup>1</sup>On August 7, 2006, the Seventh Circuit Court of Appeals issued a decision finding that the IBM Plan does not violate the age discrimination provisions in ERISA § 204(b)(1)(H) and reversing the district court.

Plaintiffs advise the Court that the plaintiffs in **Cooper** are preparing a petition for writ of certiorari in the United States Supreme Court. Thus, the Court finds that a stay of Count II of Plaintiffs' complaint in this matter is appropriate. The Court **GRANTS** the motion to stay and **STAYS** Count II of Plaintiffs' complaint pending the appeal of the Seventh Circuit's decision in **Cooper**. The parties shall advise the Court, via written notice, once the United States Supreme Court acts on the **Cooper** plaintiffs' petition for writ of certiorari.

**IT IS SO ORDERED.**

Signed this 2nd day of November, 2006.

/s/ David RHerndon  
**United States District Judge**